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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224132
Party	Defendant Kathleen Kvalvik
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Date	12/16/2015
Attachments	OPPOSITION TO MOTION FOR DEFAULT JUDGMENT_HARMONY GIRL.pdf(20006 bytes )

**IN THE UNITED STATES PATENT AND TRADEMAKR OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/497,265  
Filed January 7, 2015  
For the mark **HARMONY GIRL**  
Published in the Official Gazette on June 2, 2015

EHARMONY, INC.,

Opposer,

v.

KATHLEEN KVALVIK,

Applicant.

**Opposition No.: 91224132**

**APPLICANT'S OPPOSITION TO  
OPPOSER'S MOTION FOR DEFAULT  
JUDGMENT**

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Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313

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Applicant, KATHLEEN KVALVIK ("Applicant"), hereby submits the Opposition to Motion for Default Judgement ("Motion") filed by Opposer EHARMONY, INC. ("Opposer") as following:

On December 7, 2015, Opposer filed a motion for default judgment, claiming that the Opposer filed and served the Notice of Opposition on September 30, 2015; that "the TTAB mailed the Scheduling Order on September 30, 2015, and set November 9, 2015 as the deadline to file and serve an Answer."

The Motion should be summarily denied for several reasons. First, as explained in Attorney's Correspondence for Late Filing filed concurrently with Applicant's Answer, Applicant has never received the Scheduling Order and was never informed of the November 9,

2015 deadline to file and serve an Answer. Second, pursuant to the Scheduling Order for the “HARMONY METHOD,” Applicant filed an Answer to Opposer’s Opposition on November 16, 2015. As set forth in the Attorney’s Correspondence for Late Filing, Applicant filed the Answer after speaking with the examining attorney at USPTO and being instructed to file an Answer along with the explanation of the late filing, which Applicant complied accordingly.

Third, defaults are disfavored and cases should be decided on the merits. As a result, all doubts are resolved against the party seeking default. *Pena v. Seguros La Commercial, S.A.*, 770 F.2d 811, 814 (9<sup>th</sup> Cir. 1985). Thus, this Court should exercise its discretion to refuse to enter default judgment against Applicant for her filing of an Answer seven days later due to failure to receive the Scheduling Order from USPTO. *Lau Ah Yew v. Dulles*, 236 F.2d 415, 416 (9<sup>th</sup> Cir. 1956) (affirming denial of motion for entry of default judgment where defendant did not timely respond to amended complaint as “within the discretion of the court”).

Further, any alleged failure to timely respond to the Opposition was technical at most and hardly rises to the level of delinquency Federal Rule of Civil Procedure 55 is designed to rectify. Opposer claims that the Applicant’s late filing of the Answer is gross negligence and willful conduct. In doing so, however, Opposer intentionally manipulates the Applicant’s explanation of the late filing: the Applicant claimed that she did not receive the Scheduling Order from USPTO, not that “it lacked knowledge as to the location of the e-mail copy of that correspondence so it did not comply with the T.T.A.B.’s deadline.”

Further, the fact that Opposer communicated with Applicant regularly in the days leading up to the filing of the Opposition and the fact that Applicant refused to give an extension requested by Opposer do not demonstrate gross negligence or willful conduct. Applicant is under no obligation to accommodate Opposer’s extension request nor at any time during Opposer’s “regular communication” with Applicant did Opposer ever inform Applicant the deadline for Answer. Unless such notice was given to Applicant, the alleged “regular communication” between Opposer and Applicant and Applicant’s refusal to give extension do not and cannot constitute Applicant’s gross negligence or willful conduct.

Applicant did not receive the Scheduling Order and was unaware of the deadline to file the Answer. Immediately upon receipt of the Scheduling Order for HARMONY METHOD, Applicant spoke with the examining attorney and filed the Answer for all three marks with the explanation of late filing as instructed by the examining attorney. No gross negligence and/or willful conduct has been demonstrated by Applicant's seven day late filing of the Answer and good cause exists to show why default judgment should not be entered against Applicant. F.R.C.P. 55 (c).

Finally, Opposer's Motion is also procedurally improper. An entry of default must be requested and entered before a default judgment. F.R.C.P. 55. Applicant has not yet sought an entry of default.

For all these reasons, Applicant respectfully requests that the Motion be denied.

Respectfully submitted,



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Zina Yu, Esq.  
Attorney for Applicant

DATED: December 16, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR DEFAULT JUDGMENT was mailed first-class, postage prepaid, to Lisa Greenwald-Swire, Fish & Richardson, P.C., P.O. Box 1022, Minneapolis, MN 55440, attorneys for Opposer, this 16<sup>th</sup> day of December, 2015.



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Zina Yu